

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

LANCE WILLIAMS,

Plaintiff,

v.

ARIAS, et al.,

Defendants.

No. 1:21-cv-01794-DAD-SAB (PC)

ORDER DECLINING TO ADOPT FINDINGS  
AND RECOMMENDATIONS AND  
REFERRING THE PENDING MOTION TO  
PROCEED *IN FORMA PAUPERIS* BACK TO  
THE MAGISTRATE JUDGE

(Doc. No. 9)

Plaintiff Lance Williams is a state prisoner proceeding *pro se* in this civil rights action filed pursuant to 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On January 12, 2022, the assigned magistrate judge issued findings and recommendations, recommending that plaintiff's motion to proceed *in forma pauperis* (Doc. No. 7) be denied because: (1) he is subject to the three strikes bar under 28 U.S.C. § 1915(g); and (2) the allegations of plaintiff's complaint do not satisfy the "imminent danger of serious physical injury" exception to § 1915(g). (Doc. No. 9.) Those findings and recommendations were served on plaintiff and contained notice that any objections thereto were to be filed within fourteen (14) days of service. (*Id.* at 4.) Although plaintiff sought and received an extension of time in which

1 to file objections, no objections have been filed with the court and the time in which to do so has  
2 now passed. (*See* Doc. No. 12.)

3 The findings and recommendation state that “[a]t the time Plaintiff filed the instant  
4 complaint, he was housed (and is currently housed) at Folsom State Prison.” (Doc. No. 9 at 3.)  
5 The findings and recommendations thus concluded that defendants were no longer responsible for  
6 plaintiff at the time of his filing and that the exception for imminent danger would therefore not  
7 apply. (*Id.* at 4.) However, it appears to the undersigned that plaintiff’s initial complaint in fact  
8 may have been filed from Corcoran State Prison, where the alleged threats and harms took place.<sup>1</sup>  
9 The undersigned has been unable to identify anything in the record of this case suggesting that  
10 plaintiff’s complaint was in fact filed by him from Folsom State Prison, as stated in the pending  
11 findings and recommendations. Although plaintiff has apparently been moved to Folsom State  
12 Prison since the filing of his complaint, the imminent harm exception to the three strikes bar  
13 applies to the circumstances at plaintiff’s location when the complaint was filed, not where the  
14 plaintiff is now being held. *See Andrews v. Cervantes*, 493 F.3d 1047, 1053 (9th Cir. 2007) (“We  
15 are in agreement with all of these cases in holding that it is the circumstances at the time of the  
16 filing of the complaint that matters for purposes of the ‘imminent danger’ exception to §  
17 1915(g).”). As such, the undersigned will decline to adopt the findings and recommendations at  
18 this time, referring plaintiff’s motion to proceed *in forma pauperis* (Doc. No. 7) back to the  
19 assigned magistrate judge for further consideration.

20 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, the  
21 court has conducted a *de novo* review of this case. Having carefully reviewed the entire file, the  
22 undersigned declines to adopt the pending findings and recommendations at this time. Instead,  
23

---

24 <sup>1</sup> Although plaintiff did not file objections in this case, plaintiff is pursuing a separate case in this  
25 court stemming from the same allegations presented in his complaint in this action. *See Williams*  
26 *v. Childress, et al.*, No 1:21-cv-01793-DAD-SAB (E.D. Cal.). In that other case, plaintiff did file  
27 objections to similar findings and recommendations, in which he contended that he was  
28 incarcerated at Corcoran State Prison at the time he filed his complaint in that action (the same  
time of filing as in this case) and was in imminent danger at that time. Moreover, in that separate  
case, the court likewise declined to adopt the findings and recommendations for the same reasons  
stated in this order.

1 out of an abundance of caution, the pending motion to proceed *in forma pauperis* (Doc. No. 7)  
2 will be referred back to the magistrate judge for further consideration and for reissuance of  
3 findings and recommendations.

4 Accordingly,

- 5 1. The court declines to adopt the findings and recommendations issued on January  
6 12, 2022 (Doc. No. 9); and
- 7 2. Plaintiff's motion to proceed *in forma pauperis* (Doc. No. 7) is referred back to the  
8 assigned magistrate judge for the issuance of new findings and recommendations  
9 in light of plaintiff's objections filed in *Williams v. Childress, et al.*, No 1:21-cv-  
10 01793-DAD-SAB (E.D. Cal.) and for further proceedings.

11 IT IS SO ORDERED.

12 Dated: **April 7, 2022**

13   
14 \_\_\_\_\_  
15 UNITED STATES DISTRICT JUDGE  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28